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September 21, 2009

Mr. Jack Gould
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

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FEDERAL ELECTION
COMMISSION
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OFFICE OF GENERAL
COUNSEL

**Re: MUR 6054 – 1099 L.C. d/b/a Venice Nissan Dodge, Donald M. Caldwell,
and Brad S. Combs**

Dear Mr. Gould:

This letter constitutes a consolidated response submitted on behalf of 1099 L.C. d/b/a Venice Nissan Dodge, Donald M. Caldwell, and Brad S. Combs (collectively "Respondents") in relation to the August 19, 2009 Factual and Legal Analyses issued by the Federal Election Commission ("FEC").

This matter arose from an August 19, 2008 complaint filed by Citizens for Responsibility and Ethics in Washington ("Complaint"). After a thorough review of the facts alleged in the Complaint, the Factual and Legal Analyses,

it is clear only weak circumstantial evidence supports the allegations. Therefore, I respectfully request that the FEC dismiss the Complaint as it relates to Respondents.

Statement of Facts

1099 L.C. d/b/a Venice Nissan Dodge ("Venice Nissan Dodge") is a limited liability company ("LLC") organized in the state of Florida.¹ Venice Nissan Dodge has elected to be taxed as a partnership by the IRS in accordance with 26 C.F.R. § 301.7701-3.

¹ Under Florida state law, limited liability companies can use the abbreviation "L.C." in their name if it operated under that name prior to July 1, 2007; see Florida Stat. § 608.406(4).

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Shelby Curtsinger is an owner at Venice Nissan Dodge. Don Caldwell is the general manager at Venice Nissan Dodge. Brad Combs is the finance manager at Venice Nissan Dodge. David J. Padilla and Carlo A. Bell were finance managers at Venice Nissan Dodge until 2007. In September 2005, several Venice Nissan Dodge employees contributed to Vern Buchanan for Congress (Committee ID: C00412759) including Shelby Curtsinger, Don Caldwell, Carlo Bell, William Mullins, Marvin White, Jack Prater, and Jason Martin. Brad Combs and David Padilla did not contribute to Vern Buchanan for Congress in 2005.

Response

In the Factual and Legal Analyses, the FEC found reason to believe Venice Nissan Dodge, Don Caldwell, and Brad Combs violated the Federal Election Campaign Act of 1971, as amended ("FECA"). Specifically, the FEC found reason to believe Venice Nissan Dodge and Don Caldwell violated 2 U.S.C. § 441f by making contributions in the name of another and that Venice Nissan Dodge violated 2 U.S.C. § 441a(a) by making excessive partnership contributions. The FEC also found reason to believe Brad Combs assisted Venice Nissan Dodge in violating 2 U.S.C. § 441f. In the case of Venice Nissan Dodge and Don Caldwell, the FEC found reason to believe the FECA violations were knowing and willful.

Respondents Did Not Make Contributions in the Name of Another Person

Title 2, Section 441f of the United States Code prohibits the making of a contribution in the name of another person. The sworn statements from Shelby Curtsinger, Don Caldwell and Brad Combs clearly state that they did not reimburse or compensate or attempt to reimburse or compensate anyone for campaign contributions to Vern Buchanan for Congress.

Shelby Curtsinger denies all the allegations contained in the Factual and Legal Analyses on behalf of Venice Nissan Dodge. Mr. Curtsinger denies having any knowledge of reimbursements or compensation or attempted reimbursements or compensation in connection with campaign contributions to Vern Buchanan for Congress. Mr. Curtsinger also denies any knowledge of coercion in connection with any campaign contributions. See Exhibit A,

Don Caldwell denies all the allegations contained in the Factual and Legal Analyses that pertain to him. Mr. Caldwell denies reimbursing or compensating or attempting to reimburse or compensate anyone in connection with campaign contributions to Vern Buchanan for Congress. Mr. Caldwell also denies coercing or attempting to coerce anyone in connection with any campaign contributions. See Exhibit C, and Exhibit D, Paragraphs 2 through 5.

Brad Combs denies all the allegations contained in the Factual and Legal Analyses that pertain to him. Mr. Combs denies assisting Venice Nissan Dodge with the reimbursement or compensation or attempted reimbursement or compensation of anyone in connection with campaign

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contributions to Vern Buchanan for Congress. Mr. Combs also specifically denies the allegation by David Padilla that anyone would be reimbursed and provided additional compensation for contributing to Vern Buchanan for Congress. See Exhibit F, and Exhibit G, Paragraphs 2 through 9.

In addition to the sworn statements of Respondents, with one possible exception, no documents have been discovered that support the contribution in the name of another allegations contained in the Factual and Legal Analyses. The one arguable exception is a \$5,000 check on September 16, 2005 that was discovered during the document review process. See Exhibit B, VND 170. This disbursement was technically paid to "Cash,"

However, Respondents are providing copies of the check in the interest of full disclosure. This cash was used to pay a "fast start" bonus distributed by Don Caldwell to Carlo Bell, Jason Martin, William Mullins, Jack Pinter and Marvin White. Other than the timing of these bonuses as they relate to the allegations contained in the Complaint, there is nothing unusual about the transaction. These bonuses were paid in the normal course of business and the fast start bonus paid on September 16, 2005 was no different than bonuses paid before and after that date. See Exhibit D, Paragraph 5d. The fact the transaction was documented internally and is being disclosed to the FEC indicates there has been no attempt to hide the transaction by Venice Nissan Dodge or Don Caldwell.

Respondents Did Not Coerce Campaign Contributions

The sworn statements from Shelby Curtsinger, Don Caldwell and Brad Combs clearly state they did not coerce or attempt to coerce Carlo Bell, David Padilla, or anyone other Venice Nissan Dodge employee into making campaign contributions to Vern Buchanan for Congress. Don Caldwell specifically denies telling any Venice Nissan Dodge employees they "needed to contribute to the campaign of Vern Buchanan" or asking Carlo Bell if he was "on the team." See Exhibit D, Paragraph 5. Brad Combs specifically denies asking any Venice Nissan Dodge managers to be part of a "deal" to contribute to Vern Buchanan for Congress in return for reimbursement and additional compensation. See Exhibit G, Paragraphs 2 through 9.

In addition to the sworn statements of Respondents, no documents have been discovered that support the "element of coercion" allegation contained in the Factual and Legal Analyses.

Respondents Did Not Make Excessive Contributions

Title 2, Section 441a(a) of the United States Code limits the amount a person can contribute to federal candidates and committees per election. Venice Nissan Dodge is a limited liability company organized under the laws of the state of Florida and taxed as a partnership by the IRS in accordance with 26 C.F.R. § 301.7701-3. Under FEC regulations, Venice Nissan Dodge was eligible to make a contribution of \$2,100 per candidate, per election or a total of \$4,200 during the 2005-2006 election cycle.

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However, there is no evidence Venice Nissan Dodge made any campaign contributions during the 2006 election cycle, much less any excessive contributions. Nothing contained in the or sworn statements of Respondents supports the excessive contributions allegation contained in the Factual and Legal Analyses.

Venice Nissan Dodge and Don Caldwell Could Not Have Knowingly and Willfully Violated Federal Campaign Finance Law

Title 2, Section 437g of the United States Code sets penalties and procedures where the FEC finds there was a "knowing and willful" violation of FECA.

contain no indication of a "knowing and willful" violation of FECA – either by Venice Nissan Dodge as an entity or by anyone employed at Venice Nissan Dodge during 2005. The Legal and Factual Analyses do not assert that Brad Combs knowingly and willfully violated FECA.

Even assuming the allegations contained in the Complaint are accurate, there is no evidence Venice Nissan Dodge or Don Caldwell could have "knowingly and willfully" violated FECA. Venice Nissan Dodge policies allow only for the reimbursement of legitimate business expenses and require that compensation be based on performance. See Exhibit A,

The sworn statement from Don Caldwell states that he had no previous knowledge of campaign finance laws and no previous involvement with political campaigns. See Exhibit D, Paragraph 2.

Aside from the questionable allegations contained in the Complaint, there is no evidence of any violation of FECA at Venice Nissan Dodge.

No attempt to hide any activity has been engaged in by Venice Nissan Dodge or Don Caldwell. There is no evidence that either Venice Nissan Dodge or Don Caldwell acted with "such reckless disregard of the consequences as to be equivalent to a knowing or willful violation." In addition, the fact the September 16, 2005 check paid to cash was documented internally and is now being disclosed to the FEC demonstrates there was no "elaborate scheme" to disguise anyone's actions in this case.

The Legal and Factual Analyses are not Supported by the Evidence

The Factual and Legal Analyses appear to accept as fact the statements of Carlo Bell and David Padilla, while ignoring or discounting the statements of Don Caldwell, Brad Combs, Jack Prater, William Mullins, Marvin White, and Jason Martin. See Factual and Legal Analysis for 1099 L.C. d/b/a Venice Nissan Dodge at p. 4 lines 1-4 and 9-12. The Factual and Legal Analyses rely almost exclusively on the Complaint which in turn is based upon 2 disgruntled former employees who may not be reliable witnesses. The allegations contained in the Complaint are based on the recollections and interpretations of Carlo Bell and David Padilla regarding conversations that took place 3 years previously. As discussed in Respondent's responses to the Complaint, there is evidence that these recollections and interpretations are not accurate. The credibility of Mr. Bell

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and Mr. Padilla is further damaged by the fact both are currently involved in litigation against Venice Nissan Dodge, as noted in Don Caldwell's sworn statement. See Exhibit D, Paragraph 6.

Even assuming the allegations contained in the Complaint are accurate, at worst the violations were minor and inadvertent. The dollar amount (\$5,000) and the number of individuals (8) involved are small. The \$1,000 contributions in question were well below the \$2,100 per candidate, per election or \$4,200 per cycle limit in 2005-2006. If a scheme existed to violate FECA, a position which is not supported by the evidence, it was not an elaborate or ambitious one.

Conclusion

After a thorough review, aside from the dubious recollections of 2 former employees about activities that took place 4 years ago and weak circumstantial evidence surrounding the bonuses paid on September 16, 2005, no other direct or indirect evidence exists to support the allegations contained in the Factual and Legal Analysis. Individuals at Venice Nissan Dodge were engaging in protected First Amendment activity when they involved themselves with the Buchanan campaign. Respondents have already devoted considerable time and expense to responding to these allegations. It is very likely this investigation will deter at least some of the individuals involved from participating in the political process in the future. Based on the foregoing, I respectfully request the FEC dismiss the Complaint as it relates to Respondents.

Sincerely yours,

HOLLAND & KNIGHT LLP



Christopher DeLacy